

REMARKS

This paper responds to the Office action mailed on September 11, 2008. Claims 1, 4, and 11 are amended, no claims are canceled, and no claims are added. As a result, claims 1-11 now remain pending in this application. Amendments to claims 1, 4, and 11 are made merely for matters of formatting and not for reasons of patentability.

Claim Rejections under 35 U.S.C. §103(a)

On page 2, paragraph 5, of the Office Action, the Examiner rejected claims 1-11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,584,199 to Kim et al. (*Kim*) in view of U.S. Published Patent Application No. 2005/0033964 to Albanese et al. (*Albanese*). Since a *prima facie* case of obviousness has not been properly established, Applicants respectfully traverse the rejection.

The recent U.S. Supreme Court decision of *KSR v. Teleflex* provides a tripartite test to evaluate obviousness.

A rationale to support a conclusion that a claim would have been obvious is that *all the claimed elements were known* in the prior art and one skilled in the art could have combined the elements as claimed by known methods *with no change in their respective functions, and the combination would have yielded nothing more than predictable results* to one of ordinary skill in the art. (See *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007)). Emphasis added.)

Applicants will show that the cited references, either singly or in combination, do not teach or suggest all limitations of Applicants' claims.

Applicants' representative independent claim 1 recites, *inter alia*,

[A]n encrypted data stream . . .

including *encrypted content data*, the decryption of which requires *temporally changing control words (CW), in the data stream*;

- including *first decryption control messages (ECM's) in the data stream*, each first decryption control message (ECM) *containing at least one of the control words* that is required for decrypting content data that is *substantially contemporaneous* with the first decryption control message (ECM) in the stream;
- including *second decryption control messages* (EMM's) which contain management information for entitling selected stream receiving devices to decrypt content data from the data stream using control words from the first decryption control messages (ECM's). (Emphasis added.)

Thus, Applicants claim refers, in part, to an encrypted data stream including first (ECM) and second (EMM) decryption control messages, with each first message containing at least one control word, and encrypted content data. Applicants' other independent claims, 4, 7, and 11, each contain similar claim elements. Although claims 4 and 11 do not explicitly recite "first decryption control message (ECM) containing at least one of the control words that is required for decrypting content data that is *substantially contemporaneous* with the first decryption control message" (emphasis added) as found in claim 1, or "first decryption control messages (ECM's), which each contain a control word, *substantially contemporaneously* with the content data" (emphasis added) as found in claim 7, claims 4 and 11 each recite an encrypted data stream having control words, ECMs, EMMs, and encrypted content data. Therefore, since the encrypted data stream contains all of these data types together, it is inherent that they are "substantially contemporaneous" with one another.

The Examiner relies on *Kim* to teach each of the above-listed elements of claims 1, 4, 7, and 11. However, in contrast to the Applicants' claim elements above, *Kim* discusses a system and method in which an RCM and/or EMM is transmitted separately from any content data.

A conditional access system (CAS) . . . includes a resource subscriber management system (RSMS) for predetermining time(s) *when to transmit an RCM [receive control message] and/or EMM [entitlement management message]* for checking information on the amount used . . . and transmitting the RCM and/or EMM to each receiver at the predetermined time(s); and *a receiver which is automatically turned on at a predetermined time* to receive and decode the RCM and/or EMM . . . *and being automatically turned*

off after completing the transmission of the information. (*Kim*
Abstract. Emphasis added.)

Unlike Applicants' claimed elements, *Kim* is sending an RCM and/or EMM *separately* from the content data (it would make little sense to turn the receiver off after receiving the RCM/EMM signals and prior to receiving content data). Thus, *Kim* is merely sending an authorization signal to a receiver of, for example, scrambled satellite channel content; *at a certain time of day* so as to avoid keeping the receiver turned on 24 hours per day in order to receive the authorization signal.

To overcome the problem in that a receiver should always be "ON" to receive the RCM, RSMS 10 *predetermines a time period for RCM transmission . . .* and informs microcomputer 50 in a receiver of the predetermined RCM transmission time period. . . . RSMS 10 informs the receiver that it will *transmit the RCM for up-loading of information on the amount used at a time period when a communication line is not busy* (i.e. AM 3:00 ~ 4:00).
(*Id.* at col. 5 line 60 to col. 6, line 1. Emphasis added.)

As noted above, *Kim* does not discuss "an encrypted data stream . . . including encrypted content data . . . first decryption control messages [and] . . . second control messages." *Kim* sends content data only after control or management messages, sent separately, have authenticated a receiver the morning before. Thus, *Kim* does not have an inherently-serial "encrypted data stream . . . including encrypted content data" as recited in each of Applicants' independent claims. Since the messages and content data are sent separately in *Kim*, they certainly cannot render Applicants' claims as being obvious. Further, the separated content data and message data of *Kim* certainly cannot be considered as being "substantially contemporaneous" as either explicitly or implicitly recited in each of Applicants' recited claims.

Moreover, *Kim* is entirely silent on "decryption of [encrypted content data] requires temporally changing control words (CW), in the data stream" of apps" claims. *Kim* neither has control words in the data stream nor does *Kim* discuss control words that are temporally changed.

Although *Albanese* is not cited for providing any of the elements discussed above, *Albanese* nonetheless fails to provide any deficiencies not found in *Kim*.

Since Applicants have shown that not all the claimed elements were known as required by KSR, either by *Kim* singly or in combination with *Albanese*, Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. §103 with regard to amended independent claims 1, 4, 7, and 11.

Further, since claims 2-3, 5-6, and 8-10 depend directly from claims 1, 4, and 7, respectively, they too are allowable for at least the same reasons. Further, each of the dependent claims may be allowable for its own limitations or features.

Reservation of Rights

In the interest of clarity and brevity, Applicants may not have equally addressed every assertion made in the Office action; however, this does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 660-2015 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 25th, 2008.

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